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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF YOLO

**HILARY CEARLEY and YEKATERINA
KUCHEROVA, et al.,**

Plaintiff,

vs.

**UNIVERSITY RETIREMENT
COMMUNITY AT DAVIS, INC., a
Corporation; PACIFIC RETIREMENT
SERVICES, INC., a Corporation; and DOES 1
through 50, inclusive,**

Defendants.

CASE NO.: CV2021-0524

(Consolidated with Case No. CV2021-0531)

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: September 27, 2022

Hearing Time: 9:00 a.m.

Judge: Hon. Samuel T. McAdam
Dept. 10

Action Filed: March 26, 2021

Trial Date: Not Set

This matter, having come before the Honorable Samuel T. McAdam of the Superior Court of the State of California, in and for the County of Yolo, on September 27, 2022, for the motion by Plaintiffs Hilary Cearley and Yekaterina Kucherova ("Plaintiffs") for preliminary approval of the class settlement with Defendants University Retirement Community at Davis, Inc., and Pacific Retirement Services, Inc. (collectively, "Defendants"). The Court, having considered the briefing,

PRELIMINARY APPROVAL ORDER

1 the declaration, and all matters presented to the Court and good cause appearing, hereby GRANTS
2 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

3 **IT IS HEREBY ORDERED:**

4 1. The Court preliminarily approves the Class Action Settlement Agreement
5 ("Agreement") attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
6 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. This is based on the
7 Court's determination that the Settlement set forth in the Agreement is within the range of possible
8 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
9 and California Rules of Court, rule 3.769.

10 2. This Order incorporates by reference the definitions in the Agreement, and all
11 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

12 3. The Gross Settlement Amount is Seven Hundred Thousand Dollars (\$700,000). It
13 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate
14 and reasonable as to all potential Class Members when balanced against the probable outcome of
15 further litigation and the significant risks relating to certification, liability and damages issues. It
16 further appears that investigation and research have been conducted such that counsel for the
17 Parties are able to reasonably evaluate their respective positions. It further appears to the Court
18 that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid
19 the delay and risks that would be presented by the further prosecution of the Action. It further
20 appears that the Settlement has been reached as the result of serious and non-collusive, arms-
21 length negotiations. The Court therefore preliminarily finds that the Settlement is fair, adequate,
22 and reasonable when balanced against the probable outcome of further litigation and the
23 significant risks relating to certification, liability, and damages issues.

24 4. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
25 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$20,000, and
26 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
27 \$10,000 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount

1 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
2 evidence supporting these requests, including lodestar, prior to final approval.

3 5. The Court recognizes that Plaintiffs and Defendants stipulate and agree to
4 certification of a class for settlement purposes only. This stipulation will not be deemed
5 admissible in this or any other proceeding should this Settlement not become final. For settlement
6 purposes only, the Court conditionally certifies the following Class: “all individuals who are or
7 previously were employed by Defendants in California who were classified as hourly, non-exempt
8 employees at any time during the Class Period.” The Class Period is the period of time from
9 March 26, 2017 through May 1, 2022.

10 6. The Court concludes that, for settlement purposes only, the Class meets the
11 requirements for certification under section 382 of the California Code of Civil Procedure in that:
12 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
13 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
14 community of interest amongst the members of the Class with respect to the subject matter of the
15 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d)
16 the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a class
17 action is superior to other available methods for the efficient resolution of this controversy; and (f)
18 counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are adequate
19 representatives of the Class.

20 7. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
21 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
22 Nicholas J. De Blouw, and Jeffrey S. Herman of Blumenthal Nordrehaug Bhowmik De Blouw
23 LLP as Class Counsel for the Class.

24 8. The Court hereby approves, as to form and content, the Notice of Proposed
25 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
26 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
27 accurately inform the Class of all material elements of the proposed Settlement, of the Class
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1 Members' right to be excluded from the Class by submitting a written opt-out request, and of each
2 member's right and opportunity to object to the Settlement. The Court further finds that the
3 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
4 and this Order meets the requirements of due process, is the best notice practicable under the
5 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
6 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
7 the Agreement.

8 9. The Court hereby appoints ILYM Group as Settlement Administrator. No later
9 than 21 after the Court enters this Order, Defendant will provide to the Settlement Administrator
10 only an electronic database containing each Class Member's Class Data. The Settlement
11 Administrator will perform address updates using the National Change of Address ("NCOA")
12 database prior to the mailing of the Class Notice. Using best efforts to mail it as soon as possible,
13 and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will
14 mail the Class Notice Packets to all Class Members via first-class U.S. Mail.

15 10. The Court hereby approves the procedures for Class Members to participate in, opt
16 out of, or object to the Settlement as set forth in the Settlement Agreement and the Class
17 Notice. Any Class Member may individually choose to opt out of and be excluded from the Class
18 as provided in the Class Notice by following the instructions for requesting exclusion from the
19 Class that are set forth in the Class Notice. All requests for exclusion must be postmarked to the
20 Settlement Administrator by no later than forty-five (45) calendar days after the date of the
21 mailing of the Class Notice, which deadline shall be printed in the Class Notice. Any such person
22 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
23 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
24 comment thereon. Class Members who have not requested exclusion shall be bound by all
25 determinations of the Court, the Agreement and the Judgment. A request for exclusion may only
26 opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass
27 of individuals is not permitted and will be deemed invalid.

1 11. Any Class Member who has not opted out may appear at the final approval hearing
2 and may object or express the Member's views regarding the Settlement, and may present
3 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
4 and determined by the Court as provided in the Notice. Class Members will have forty-five (45)
5 days from the date of the mailing of the Class Notices to postmark their written objections to the
6 Settlement Administrator with copies to counsel for both Parties in accordance with the
7 instructions in the Class Notice. Alternatively, Class Members may appear at the Final Approval
8 Hearing to make an oral objection.

9 12. A Final Approval Hearing shall be held before this Court on _____
10 _____ at _____ in Department 10 of the Yolo County Superior Court to determine
11 all necessary matters concerning the Settlement, including: whether the proposed settlement of the
12 Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable
13 and should be finally approved by the Court; whether the Final Approval Order and Judgment
14 should be entered herein; whether the plan of allocation contained in the Agreement should be
15 approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys'
16 fees and costs, the service awards, and the expenses of the Settlement Administrator. All papers in
17 support of the motion for final approval and the motion for attorneys' fees, costs and service
18 awards shall be filed with the Court and served on all counsel no later than sixteen (16) court days
19 before the hearing and both motions shall to be heard at the Final Approval Hearing.

20 13. Neither the Settlement nor any exhibit, document, or instrument delivered
21 thereunder shall be construed as a concession or admission by Defendants in any way that the
22 claims asserted have any merit or that this Action was properly brought as a class or representative
23 action, and shall not be used as evidence of, or used against Defendants as, an admission or
24 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
25 omission by Defendants or with respect to the truth of any allegation asserted by any person.
26 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
27 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
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1 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
2 deemed to be evidence for any purpose adverse to the Defendants, including, but not limited to,
3 evidence of a presumption, concession, indication or admission by Defendants of any liability,
4 fault, wrongdoing, omission, concession or damage.

5 14. In the event the Settlement does not become effective in accordance with the terms
6 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
7 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
8 and the Parties shall revert to their respective positions as of before entering into the Agreement,
9 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
10 including all available defenses and affirmative defenses, and arguments that any claim in the
11 Action could not be certified as a class action and/or managed as a representative action. In such
12 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
13 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
14 the Agreement with respect to the effect of the Agreement if it is not approved.

15 15. The Court reserves the right to adjourn or continue the date of the final approval
16 hearing and all dates provided for in the Agreement without further notice to Class Members, and
17 retains jurisdiction to consider all further applications arising out of or connected with the
18 proposed Settlement.

19 16. The Action is stayed and all trial and related pre-trial dates are vacated, with the
20 exception of the settlement approval process and subject to further orders of the Court at the Final
21 Approval Hearing.

22 **IT IS SO ORDERED.**

23
24 Dated: _____

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26 _____
27 HON. SAMUEL T. MCADAM
28 JUDGE, SUPERIOR COURT OF CALIFORNIA,
COUNTY OF YOLO

PRELIMINARY APPROVAL ORDER